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 Our File No.: 109794

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

MICHAEL CAMPBELL,

Plaintiff,

vs.

AMERICAN RECOVERY SERVICES
 INCORPORATED,

Defendant.

Docket No:

COMPLAINT

JURY TRIAL DEMANDED

MICHAEL CAMPBELL (hereinafter referred to as “*Plaintiff*”), by and through the undersigned counsel, complains, states and alleges against AMERICAN RECOVERY SERVICES INCORPORATED (hereinafter referred to as “*Defendant*”), as follows:

INTRODUCTION

1. This action seeks to recover for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*, (“FDCPA”), The Rosenthal Fair Debt Collection Practices Act (“The Rosenthal Act”) California Civil Code § 1788 *et. seq.*, and New York General Business Law (“NYGBL”) § 349.

JURISDICTION AND VENUE

2. This Court has federal subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1692k(d), and jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

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4. Venue is proper under 28 U.S.C. §1391(b) because Defendant resides in this Judicial District and/or because a substantial part of the events or omissions giving rise to this claim occurred in this Judicial District.

PARTIES

7. Plaintiff, a “consumer” as defined by 15 U.S.C. § 1692a(3), is allegedly obligated to pay a debt.

9. Defendant is regularly engaged, for profit, in the collection of debts allegedly owed by consumers.

10. Defendant is a person who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and is therefore a debt collector as defined by 15 U.S.C. § 1692a(6).

ALLEGATIONS

11. Plaintiff's alleged debt was primarily for personal, family or household purposes and is therefore a "debt" as defined by 15 U.S.C. § 1692a(5).

12. Sometime after the incurrence of the debt, but before the initiation of this action, Plaintiff is alleged to have fallen behind on payments allegedly owed on the alleged debt.

13. At a time known only to Defendant, Plaintiff's alleged debt was assigned or otherwise transferred to Defendant for collection.

14. In its efforts to collect the alleged debt, Defendant contacted Plaintiff by written correspondence. (“Exhibit 1.”)

15. Defendant's written correspondence to Plaintiff was a "communication" as defined by 15 U.S.C. § 1692a(2).

16. As set forth in the following Counts, Defendant's communication violated the FDCPA, The Rosenthal Act and NYGBL.

FIRST COUNT
Violation of 15 U.S.C. § 1692g
Validation of Debts

17. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

18. 15 U.S.C. § 1692g provides that within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing certain enumerated information.

19. One such requirement is that the debt collector provide "the name of the creditor to whom the debt is owed." 15 U.S.C. § 1692g(a)(2).

20. A debt collector has the obligation not just to convey the name of the creditor to whom the debt is owed, but also to convey such clearly.

21. A debt collector has the obligation not just to convey the name of the creditor to whom the debt is owed, but also to state such explicitly.

22. Merely naming the creditor without specifically identifying the entity as the current creditor to whom the debt is owed is not sufficient to comply with 15 U.S.C. § 1692g(a)(2).

23. Even if a debt collector conveys the required information, the debt collector nonetheless violates the FDCPA if it conveys that information in a confusing or contradictory fashion so as to cloud the required message with uncertainty.

24. When determining whether the name of the creditor to whom the debt is owed has been conveyed clearly, an objective standard, measured by how the "least sophisticated consumer" would interpret the notice, is applied.

25. Defendant's letter fails to explicitly identify the name of the creditor to whom the debt is owed.

26. Defendant's letter states, "Creditor: American Express."

27. Defendant's letter fails to identify any entity as the "creditor to whom the debt is owed."

28. "American Express," even if meant as the creditor to whom the debt is owed (which is not stated in the letter), is not specific enough to apprise Plaintiff of the identity of the

1 creditor to whom the debt is owed.

2 29. There is no entity named “American Express” registered with the New York State
3 Department of State, Division of Corporations.

4 30. Conversely, there are sixty-one (61) disparate entities registered in New York that
5 begin their legal name with “American Express.”

6 31. The least sophisticated consumer would likely be confused as to which of the sixty-
7 one (61) disparate entities registered in New York that begin their legal name with “American
8 Express” is the creditor to whom the debt is owed.

9 32. The least sophisticated consumer would likely be uncertain as to which of the sixty
10 -one (61) disparate entities registered in New York that begin their legal name with “American
11 Express” is the creditor to whom the debt is owed.

12 33. Defendant failed to explicitly state the name of the creditor to whom the debt is
13 owed.

14 34. Defendant failed to clearly state the name of the creditor to whom the debt is owed.

15 35. The least sophisticated consumer would likely be confused as to the name of the
16 creditor to whom the debt is owed.

17 36. The least sophisticated consumer would likely be uncertain as to the name of the
18 creditor to whom the debt is owed.

19 37. Defendant has violated § 1692g as it failed to clearly and explicitly convey the
20 name of the creditor to whom the debt is owed.

21 **SECOND COUNT**

22 **Violation of 15 U.S.C. § 1692e**

23 **False or Misleading Representations as to the Name of the** 24 **Creditor to Whom the Debt is Owed**

25 38. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

26 39. 15 U.S.C. § 1692e prohibits a debt collector from using any false, deceptive, or
27 misleading representation or means in connection with the collection of any debt.

28 40. While § 1692e specifically prohibits certain practices, the list is non-exhaustive,
29 and does not preclude a claim of falsity or deception based on any non-enumerated practice.

30 41. Collection notices are deceptive if they can be reasonably read to have two or more
31 different meanings, one of which is inaccurate.

1 59. Defendant violated NY GBL § 349(a) and is liable to Plaintiff pursuant to NY GBL
2 § 349(h).

3 **FOURTH COUNT**
4 **Violation of the Rosenthal Fair Debt Collection Practices Act**
5 **California Civil Code §§ 1788-1788.32**

6 60. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

7 61. California Civil Code § 1788.17 provides that every debt collector collecting or
8 attempting to collect a consumer debt shall comply with Sections 1692b through 1692j of the
9 FDCPA.

10 62. Defendant's conduct, as described herein, violates the aforesaid sections of the
11 FDCPA.

12 63. Because Defendant's conduct, as described herein, violates the FDCPA, it also
13 violates California Civil Code § 1788.17.

14 64. Defendant's conduct, as described herein, violates multiple provisions of The
15 Rosenthal Act.

16 65. California Civil Code § 1788.17 provides that every debt collector collecting or
17 attempting to collect a consumer debt shall be subject to the remedies in Section 1692K of the
18 FDCPA.

19 66. California Civil Code § 1788.30 also provides for actual and statutory damages, as
20 well as the award of reasonable attorney's fees.

21 67. California Civil Code § 1788.32 provides that the remedies provided in § 1788.30
22 are intended to be cumulative and are in addition to any other procedures, rights, or remedies
23 under any other provision of law.

24 Defendant is liable to Plaintiff pursuant to California Civil Code § 1788.30.

25 **JURY DEMAND**

26
27 68. Plaintiff hereby demands a trial of this action by jury.

28 **PRAYER FOR RELIEF**

29 **WHEREFORE**, Plaintiff respectfully requests judgment as follows:

30 a. Statutory damages against Defendant pursuant to 15 U.S.C. § 1692k of
31

1 \$1,000.00; and

2 b. Plaintiff's attorneys' fees pursuant to 15 U.S.C. § 1692k; and

3 c. Plaintiff's actual damages; and

4 d. Damages against Defendant pursuant to NYGBL § 349; and

5 e. Damages against Defendant pursuant to The Rosenthal Act §1788.30; and

6 f. Plaintiff's costs; together with

7 g. Such other relief that the Court determines is just and proper.

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10 DATED: November 23, 2015

11 **BARSHAY SANDERS PLLC**

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